

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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JUL 24 2020

BY MAIL

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case NO: 4:05-CR-00235-CEJ

DERRICK HOWARD,  
Defendant.

MOTION TO UNSEAL EX-PARTE  
COMMUNICATION OF JOHN CONVERY  
AND EDWARD BARTOLOMEI ATTORNEY'S  
FOR [REDACTED] DEFENDANT DERRICK HOWARD IN  
CHAMBERS OF HONDRABLE JUDGE  
CAROL JACKSON ON JANUARY 18,  
2007



COMES NOW the Defendant Derrick Howard pro se for his Motion to Un-Seal ex-parte Communication of John Convery and Edward Bartolomei Attorney's for Defendant Derrick Howard IN Chambers of Honorable Judge Carol Jackson ON January 18, 2007 and States the following:

1) Defendant is a layman with no formal training in the law. This Court must liberally construe his pleadings. See: HAINES V. KERNER

2) Defendant has a reasonable good faith belief that his trial attorneys specifically John Convery breached his fiduciary duty and violated the attorney client privilege during the January 18, 2007 ex-parte communication in Judge Carol Jackson chambers. See: Trial Transcript Volume IX 1-18-07 pages 2000 - ~~2010~~ 2016. Specifically on page 2008 at 12 John Convery States:

"Judge, some of these things, earlier today, after giving the government this tape, I had indicated a need to speak to the Court about these things in chambers? Okay? And if didn't, I'm perfectly willing to answer every question that the Court has. The problem is that a lot of is bound up with what I consider to be attorney-client privileged materials -- okay? -- that I can't, if you will share with the government."



The Court clearly states to John Convery that she didn't want him to violate any privilege - see page 2008 at line 20

Line: 20-21 The Court: "I don't want you to violate any privilege, but you have to admit this is very unusual."

Line: 22-23 MR. Convery: "It's the first time it's ever happened"

Line: 24 The Court: "Well, same here."

Line: 25 MR. Convery: "And that I should be handed anything  
Page 2009 Line: 1 during a trial."

This exchange continued on the record on page 2009.

Line: 2-6 The Court: And you can appreciate why I'd be a little curious about how this gentleman suddenly appeared with a tape recording of voice mail messages when he apparently was not involved in these conversations or these phone calls.

Line: 7 MR. Convery: Absolutely. Absolutely, Your Honor.

Line: 8-9 The Court: So you said you may call him as a witness?



Line: 10 MR. Convery: That is correct, Your Honor.

Line: 11-12 The Court: What's he going to say about where this  
came from?

Line: 13-16 MR. Convery: Your Honor, again, I should be able to  
share that information in chambers with the Court and the  
things that I've learned during this investigation, but I  
should not have to share --

Line: 17-18 The Court: If he's going to be a witness, somebody  
is going to ask him, "where did you get this tape?"

Line: 19 MR. Convery: I understand that, Judge.

Line: 20-21 The Court: So you don't feel that you can tell me  
now?

Line: 22 MR. Convery: I would be happy to tell the Court. I  
23 would be happy to do it on the record, but I believe that  
24 it's something that I have to do ex-parte in chambers.

Line: 25 The Court: Okay. But he has told you then -- and

Page 2010 Line 1 When I say "you" I mean either of you -- he has told one of  
2 you how he came to be in possession of this tape recording?



PAGE 2010

Line 3 MR. Convery: In a very brief way, Your Honor. Yes,  
that is correct.

Line 5: The Court: And so when you say you need to do more  
6 investigation, you mean to verify or try to confirm what he's  
7 told you or something else?

Line: 8 MR. Convery: That is part of the issue, Your Honor.  
9 I'm trying to verify.

Line: 10 The Court: Okay. When did you speak with MR.  
11 Heindl? When was the first time you spoke to him after  
12 January 5<sup>th</sup> when he delivered this tape? Was it that same  
13 day?

Line: 14 MR. Bartolomei: I believe it was that day, Your  
15 Honor, for maybe three minutes

Lines 16 The Court: I am sorry?

Line: 17 MR. Bartolomei: Three minutes, maybe.

Line: 18 The Court: You just talked to him on the phone?

Line: 19 MR. Bartolomei: When we were on break and getting  
20 ready for trial.



Page 2010

Line: 21 The Court: You were talking to him on the phone?

Line: 22 MR. Bartolomei: Right

Line: 23 The Court: And you haven't spoken to him since?

Line: 24 MR. Bartolomei: Your Honor, for the reasons that  
25 MR. Convery and I, again, attorney-client.

John Convery continues to tell Judge Jackson that it's attorney-client privilege. The Court should have never allowed MR. Convery to speak ex-parte regarding any matters closely related to attorney-client privilege, yet she did ~~did~~ After repeated warning from MR. Convery.

See: Page 2011 at 22.

Lines 22-25 MR. Convery: Again, some of those things I think it  
23 is a rational and reasonable -- well, the facts, I'd be happy  
24 to give to the Court ex-parte in chambers to the extent that  
25 they're bound up with items that are attorney-client

CONTINUED ON PAGE 2012 Lines 1-3

1 privilege. It's very difficult for me, and I assure you,  
2 Your Honor, that I'm trying to do this as professionally as I  
3 can. I've never been in this situation before.



Line: 4 MR. Bartolomei: Me either.

Line: 5 MR. Convery: I assure the Court that I am trying to  
6 be as forth coming as possible.

Line 8-12 The Court: Well, I'll tell you what: I'm going to  
9 give an opportunity to make an ex-parte statement to me. But  
10 if at the conclusion I believe that this is something that  
11 the government ought to hear about and if it's not truly  
12 ex-parte --

Line: 13 MR. Convery: Yes, Your Honor.

Line: 14 The Court: -- I'm going to share it with them.

Line: 15 MR. Convery: Your Honor.

Line: 17-18 The Court: Okay. All right. We'll do this in  
18 Chambers.

Line: 19 MR. Convery: Yes, Your Honor.

Line: 20 The Court: Give Gary a moment --

Line: 21 MR. Convery: Yes, Your Honor.

Line: 22-23 The Court: -- to take his things in chambers, and  
we'll continue this discussion there.



Page 2015

Line: 24 Ms. Scott: Your Honor, defense first?

Line: 25 The Court: Just the attorneys. Just the attorneys.  
Page 2016 at Line: 1 Okay? all right?

Line: 2 MS. Morrissey: Not from both sides at the same  
3 time?

Line: 4 The Court: No, you all can just stay here.

Line: 5 MS. Scott: I wanted to be sure.

Line: 7 (Whereupon, a sealed in-camera conference took place.)

### CONCLUSION

It's a well known legal fact that attorney's can not share any attorney client materials with a third party unless the client clearly waives his attorney-client privilege. Defendant Derrick Howard never waived his attorney client privilege and should have at the very least been allowed to participate in the ex-parte sealed in camera conference with his very own attorneys who he retained and paid them, which clearly established a attorney-client relationship and placed his attorney's in a fiduciary position which they violated. Wherefore, this Court in the interest of justice must un-seal the January 18, 2007 ex-parte in camera conference between John Convery and Edward Bartolonei and provide Defendant Derrick Howard a copy of said



transcript and immediately re-seal said transcript once Defendant Derrick Howard has been provided a certified copy of the transcript of the January 18, 2007 ex-parte in camera conference between the court and his privately retained attorneys John Convery and Edward Bartolomei so defendant may ascertain if his attorneys violated his attorney-client communications and materials.

WHEREFORE, this Court enters an order to un-seal the January 18, 2007 ex-parte in camera conference and provide Defendant Derrick Howard a certified copy of that ex-parte in camera conference and then immediately re-seal said ex-parte in camera conference between his retained attorneys John Convery and Edward Bartolomei.

Respectfully submitted,  
Derrick Howard  
Derrick Howard # 24997-044  
USP Tucson  
P.O. Box 24550  
Tucson, AZ 85734



## CERTIFICATE OF SERVICE

I, Derrick Howard certify that on this 21<sup>st</sup> day of July, 2020 I served a true and correct copy of the foregoing in a properly sealed envelope with first class postage affixed.

I, Derrick Howard delivered same to the U.S. P. Tucson prison officials who handles legal mail on this 21<sup>st</sup> day of July, 2020 to be deposited into the U.S. postal Mail addressed to the following:

United States Attorney Office  
EASTERN District of Missouri  
111 S. Tenth St.  
St. Louis, MO 63102

Thus, invoking the prison mail box rule as held in *Houston v. Lack*.

Derrick Howard

Derrick Howard, Pro Se



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July 21, 2020

Attention: Clerk of Court  
United States District Court  
Eastern District of Missouri  
Eastern Division  
111 S. Tenth St.  
St. Louis, MO 63102

Re: United States v. Derrick Howard  
Case No: 4:05-cr-235-CEJ (4:05-cr-235-CEJ)

Dear Clerk,

I'm a indigent incarcerated individual and I'm requesting a courtesy copy of the docket sheet for U.S. v. Derrick Howard, Case # 4:05-cr-235-CEJ. I'm unable to bear the cost due to being indigent. I've been in prison 16½ yrs and I have no income. Therefore, I'm requesting a one time courtesy copy of the above mentioned docket sheet. I need it because prison officials are claiming I owe some form of restitution in this case. I was recently transferred to USP Tucson in November, 2019. The prison Trust Fund Dept. is encumbering my funds as a direct result of this alleged restitution order. However, it is my position no ~~a~~ such restitution order was ever entered in this case. This is why I need a courtesy copy of the above mentioned docket sheet.

BACK →



Please mail the requested docket sheet to me at the address listed below:

Derrick Howard #24997-044

USP Tucson

P.O. Box 24550

Tucson, AZ 85734

LEGAL MAIL OPEN IN

THE PRESENCE OF INMATE

It has to be addressed exactly as written above. Please honor my request for a courtesy copy of the docket sheet.

Thank you for your time and attention in this matter.

Thank you,  
Derrick Howard



Inmate Name: Derrick Howard  
Register Number: #24997-044  
United States Penitentiary Tucson  
Post Office Box 24550  
Tucson, Arizona 85734

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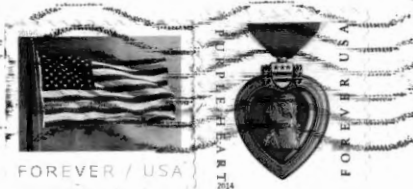
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SPECIAL MAIL  
LEGAL MAIL

PHOENIX, AZ 852

21 JUL 2020 PM 10:1



Attention: Clerk of Court  
United States District Court  
Eastern District of Missouri  
111 S. Tenth Street  
St. Louis, MO 63102

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